

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

VARTA MICROBATTERY GMBH,

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA,  
INC.,

Defendant.

Civil Action No. 2:20-cv-00029-JRG

**JURY TRIAL DEMANDED**

**JOINT MOTION TO CONSOLIDATE PROCEEDINGS**

Plaintiff VARTA Microbattery GmbH (“VARTA”) and Defendant Samsung Electronics America, Inc. (“SEA”) respectfully and jointly move this Court pursuant to Fed. R. Civ. P. 42(a)(2) to consolidate this case with a previously consolidated case, *VARTA Microbattery GmbH v. Costco Wholesale Corp., et al.*, 2:20-cv-00051-JRG, also pending before this Court. Consolidation of these cases for all pretrial issues is appropriate because they involve overlapping issues of law and fact including with respect to claim construction. Accordingly, placing these cases on the same pretrial schedule will promote judicial and party efficiency.

VARTA and SEA have conferred with the Defendants in the *Costco* case and they do not oppose consolidating these actions.

**Background and Status of the Lawsuits**

On February 5, 2020, VARTA filed its Complaint against SEA in the instant action alleging infringement of three patents, U.S. Patent 9,153,835 (“the ’835 Patent”), U.S. Patent 9,496,581 (“the ’581 Patent”), and U.S. Patent 9,799,913 (“the ’913 Patent”). The accused products are

wireless earphones containing microbatteries made, sold, offered for sale, and/or imported into the United States by SEA under the tradename Galaxy Buds®. This lawsuit was assigned docket no. 2:20-cv-00029.

On February 24, 2020, VARTA filed separate Complaints against Amazon.com Inc. (“Amazon”), Best Buy Co., Inc. (“Best Buy”), and Costco Wholesale Corporation (“Costco”). Those cases respectively are *VARTA Microbattery GmbH v. Amazon.com, Inc.*, 2:20-cv-00052, *VARTA Microbattery GmbH v. Best Buy Co., Inc.*, 2:20-cv-00054,<sup>1</sup> and *VARTA Microbattery GmbH v. Costco Wholesale Corp.*, 2:20-cv-00051. The Amazon and Costco Complaints allege infringement of the ’835 Patent, ’581 Patent, and ’913 Patent by virtue of the sale, offer to sell, and/or importation into the United States of Galaxy Bud earphones including microbatteries manufactured by EVE Energy. The Best Buy Complaint likewise alleges infringement of the ’835 Patent, ’581 Patent, and ’913 Patent based on the sale, offers to sell, and/or importation of the Galaxy Bud earphones with EVE microbatteries. The Best Buy Complaint additionally alleges infringement of the ’835 Patent, ’581 Patent, and ’913 Patent and an additional VARTA Patent, U.S. Patent 9,799,858 (“the ’858 Patent”) based on Best Buy activities regarding a JBuds earphone made by PEAG, LLC, d/b/a JLab Audio, which earphone contains a microbattery made by Mic-Power.

On March 4, 2020, VARTA filed a Complaint against PEAG alleging infringement by virtue of its activities regarding JBud earphones that contain the infringing Mic-Power microbatteries. *VARTA Microbattery GmbH v. PEAG, LLC d/b/a JLab Audio*, was assigned docket no. 2:20-cv-00071-JRG.

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<sup>1</sup> The Parties have since substituted Best Buy Stores, LP; Best Buy.com LLC; and Best Buy Texas.com LLC for Best Buy Co. Inc. See, e.g., Dkt. Nos. 14 and 19 in 2:20-cv-00054.

On April 16, 2020, the Court consolidated the *Amazon* case with the *Costco* case, identifying the *Costco* case, 2:20-cv-00051-JRG, as the lead case.<sup>2</sup>

On May 4, 2020, VARTA filed a Complaint against Audio Partnership PLC and its subsidiary Audio Partnership LLC, alleging infringement based on activities regarding a Melomania earphone that contains the infringing Mic-Power microbattery. That case is *VARTA Microbattery GmbH v. Audio Partnership, LLC et al.*, 2:20-cv-00138-JRG.

On May 7, 2020, the Court thereafter consolidated the *Audio Partnership*, *Best Buy*, and *PEAG* cases with earlier consolidated *Costco* case. The *SEA* case has not been consolidated with the *Costco* case to date.

On May 18, 2020, the Court held scheduling conferences in the *SEA* case and the consolidated *Costco* case. The Court also provided to the parties proposed Docket Control Orders for each action. While largely aligned, the two Docket Control Orders differ with respect to the claim construction schedules. The claim construction hearing for the *SEA* case is presently scheduled for December 15, 2020 before Magistrate Judge Payne. The claim construction hearing for the consolidated *Costco* case is scheduled to occur on January 15, 2021 before this Court. The parties have met and conferred and agree that these cases should proceed under a consolidated schedule.

### **Further Consolidation is Appropriate**

Federal Rule of Civil Procedure 42(a) provides that [i]f cases involve a common question of law or fact, a court may ... (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). “Consolidating cases for pretrial matters furthers convenience and economy in administration.” *Vantage Point Tech., Inc. v. Amazon.com, Inc.*, No.

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<sup>2</sup> The case against Costco and Amazon have since been stayed as to those parties. See, e.g., Dkt. No. 36 in 2:20-cv-00051.

13-cv-909, 2015 WL 123593, at \*3 (E.D. Tex. Jan. 6, 2015). Because the *SEA* case and the consolidated *Costco* case are already substantially aligned in terms of the overlapping issues involved and the overall schedules currently proposed, the *SEA* case should be consolidated with the *Costco* case for all pretrial issues including claim construction.

The asserted patents and the accused products involve the same technology area. It is anticipated that the claim construction issues will be similar. Accordingly, for efficiency and consistency, those issues should all be addressed through the same claim construction proceeding.

Both cases are in the early stages. The docket control orders proposed by the Court provide the same due dates and deadlines for fact and expert discovery, dispositive motions, pretrial disclosures and trial. The discovery order being developed between the parties provides for common interrogatories and requests for admission propounded by VARTA to the Defendants in all cases and from the Defendants collectively to VARTA such that discovery in both cases will significantly overlap. The parties also are working to ensure that witnesses will only be deposed once across all the cases. The only difference between the schedules for the *SEA* and *Costco* cases is claim construction, and it would be reasonable to align those dates as well.

Finally, by consolidating the *SEA* and *Costco* cases for claim construction, the Court will only receive one set of briefs, will only need to hold one *Markman* hearing, and will only need to issue one opinion. Accordingly, consolidation will conserve judicial and party resources with no apparent prejudice to any party.

### **Conclusion**

To promote efficiency and consistency, VARTA and SEA respectfully request that the present case be consolidated with the *Costco* case for all pretrial issues including claim construction. A proposed order is submitted herewith for consideration by the Court.

Dated: May 29, 2020

/s/ Stephen A. Marshall

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 29, 2020, a true and correct copy of the foregoing document was served on all attorneys of record who have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Andrew W. Stinson

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